

This letter references the Department's administrative rules on computer software and maintenance agreements. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

July 25, 2005

Dear Xxxxx:

This letter is in response to your letter dated June 22, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a software company in CITY/STATE making sales into the state of Illinois.

We have sales representatives who travel to customer locations in your state, and employees who install our software and provide training at customer locations in your state. We also have employees who attend various tradeshow throughout the year, which may or may not be in your state. Because of these circumstances, we have been advised by our public accounting firm to register as doing business in your state, and therefore, collect and remit sales tax.

Our sales consist of *canned* software, 1st year support, maintenance, maintenance renewal, and professional services.

We are trying to identify the sales tax liability on our maintenance renewal orders.

Our maintenance consists of telephone support and all upgrades/updates.

1. We consider this maintenance 'mandatory' in order for the customer to receive any upgrades/updates.
2. Telephone support and upgrades/updates are billed as one line item 'support'.

3. The customer may receive their upgrades/updates via download (ie; electronic delivery) if the original order was sent via download, other wise a diskette will be mailed.

Please advise, in detail as to the tax liability of our maintenance.

DEPARTMENT'S RESPONSE:

You have inquired concerning the taxability of computer software. The Department's administrative rule regarding computer software can be found at 86 Ill. Adm. Code 130.1935. In connection with your computer software inquiry, you have asked about maintenance agreements. For answers concerning maintenance agreements please see 86 Ill. Adm. Code 140.301(b)(3).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk